SUBJECT INDEX.

	Page.
Suggestions in opposition to appellant's petition for rehearing	1
Opinion in Court below—International Shoe Company vs. Shartel, 29 Fed. (2d.) 604	4

CASES CITED.

Gilliland Oil Company vs. Arkansas, 274 U. S. 717, 71 L. Ed. 1322, affirming 171 Ark. 415, 285 S. W. 16	3
Home Insurance Company of New York vs. People, 134 U. S. 594-606, 33 L. Ed. 1025	3
Hump Hairpin Company vs. Emmerson, 258 U. S. 290, 66 L. Ed. 622	3
Macallen Company vs. Massachusetts, case No. 578, May 27, 1929	4
Maine vs. Grand Trunk Railway Company, 142 U. S. 217, 35 L. Ed. 994	3
Margay Oil Corporation vs. Applegate, 283 U. S. 666, 77 L. Ed. 830, affirming 167 Ark. 614, 269 S. W. 63, 169 Ark. 96, 272 S. W. 845	3
People of the State of New York vs. Latrobe, Case No. 601, United States Supreme Court, decided May 13, 1929, No. 12, United States Supreme Court Advance Opinions, June 1, 1929, p. 407	3-4
Roberts & Schaefer Company vs. Emmerson, 271 U. S. 50-57, 70 L. Ed. 827	3
St. Louis, San Francisco Railway Company vs. Middlekamp, 256 U. S. 226, 231-232, 65 L. Ed. 905	3

	Page
State vs. Pierce Petroleum Corporation, 2 S. W. (2d.) 790	1-2-3
State ex rel. Marquette Hotel Investment Company vs. State Tax Commission, 282 Mo. 213, 221 S. W. 721	3
State ex rel. Missouri Pacific Railroad Company vs. Danuser et al., 6 S. W. (2d.) 907	1-3
Section 9790, R. S. Mo. 1919	2
Section 12, pp. 664-5, Laws of Mo. 1921	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 579.

INTERNATIONAL SHOE COMPANY, *Appellant*,

vs.

STRATTON SHARTEL, ATTORNEY-GENERAL OF THE STATE OF MISSOURI, AND C. EUGENE STEPHENS, STATE TREASURER OF THE STATE OF MISSOURI, *Appellees*.

SUGGESTIONS IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING.

The appellant in its petition for rehearing, misconceives the nature, purpose and application of the Missouri franchise tax laws and the fundamental reasons for the courts holding that the states have authority to prescribe any reasonable non-discriminatory basis or measure for such taxes.

The Missouri annual franchise tax laws, including the provision that each share of non-par stock shall be considered the equivalent of a share having a par value of one hundred dollars, were enacted according to the requirements of the Constitution of the State and do not violate any of its provisions.

State ex rel. Missouri Pacific Railroad Company vs. Danuser et al., 6 S. W. (2d.) 907.

State vs. Pierce Petroleum Corporation, 2 S. W. (2d.) 790.

The provisions of Section 12, pages 664 and 665, Laws of Missouri, 1921, (page 57, appellant's original brief herein)

applies equally to domestic and foreign corporations, and for the purpose of computing organization taxes, taxes on the privilege of entering the State, or annual franchise taxes, each share of stock without par value shall be considered the equivalent of a share having a par value of one hundred dollars. The appellant voluntarily engaged in business in Missouri, and came into the State under the express provision of Section 9790, R. S. Mo. 1919, which is in part as follows:

> "• • • • and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers." State vs. Pierce Petroleum Corporation, 2 S. W. (2d.) 790.

The Missouri annual franchise tax is not a tax on property but is a tax on the privilege of doing business in the State. It is non-discriminatory and bears equally on domestic and foreign corporations, and in each instance is based upon the proportion that the property and assets of the corporation employed in business in this State bears to all its property and assets wherever located. The tax is measured by one-twentieth of one per cent on such proportion of the outstanding capital stock and surplus of the corporation, each share of non-par stock being considered the equivalent of a share of the par value of one hundred dollars. The tax amounts to five cents per share on such proportionate part of the non-par stock. The measure adopted by Missouri is definite and certain; it constitutes no burden on interstate commerce; it applies equally to foreign and domestic corporations; the property and assets of the corporation employed in business outside of the State is excluded in computing the tax; it is confined to outstanding shares of stock; in fact it meets every test and the court rightfully held it to be valid.

People of the State of New York vs. Latrobe, Case No. 601, United States Supreme Court, decided May 13, 1929, No. 12 United States Supreme Court Advance Opinions, June 1, 1929, p. 407.

Margay Oil Corporation vs. Applegate, 273 U. S. 666, 71 L. Ed. 830, affirming 167 Ark. 614, 269 S. W. 63, 169 Ark. 96, 272 S. W. 845.

Gilliland Oil Company vs. Arkansas, 274 U. S. 717, 71 L. Ed. 1322, affirming 171 Ark. 415, 285 S. W. 16.

Home Insurance Company of New York vs. New York State, 134 U. S. 594-606, 33 Law Ed. 1025.

Hump Hairpin Company vs. Emmerson, 258 U. S. 290, 66 Law Ed. 622.

Maine vs. Grand Trunk Railway Company, 142 U. S. 217, 35 L. Ed. 994.

Roberts & Schaefer Company vs. Emerson, 271 U. S. 50-57, 70 L. Ed. 827.

State ex rel. Missouri Pacific Railroad Company vs. Danuser et al., 6 S. W. (2d.) 907.

State vs. Pierce Petroleum Corporation, 2 S. W. (2d.) 790.

St. Louis, San Francisco Railway Company vs. Middlekamp, 256 U. S. 226, 231-232, 65 L. Ed. 905.

State ex rel. Marquette Hotel Investment Company vs. State Tax Commission, 282 Mo. 213, 221 S. W. 721.

No tax was computed on the $51,086,445.15 surplus the corporation claimed to have. Such surplus was purely arbitrary and determined by the corporation ascribing the value of approximately $9.60 to each share of non-par stock and adding such valuation to the 100,000 shares of preferred stock of the par value of one hundred dollars per share, and deducting the total thus obtained from the valuation placed by the corporation on its property and calling the remainder surplus. The corporation made no allowance of value for the good will of the going concern, nor for the dividend

earning power of the shares of stock. There can be no surplus in a wholly non-par stock corporation, and a surplus could only exist in a corporation having both par and non-par stock by assuming that the non-par stock had a certain value.

As pointed out by the trial court in this case, 29 Fed. (2d.) 604, and by the Supreme Court of the United States in case No. 579, decided May 13, 1929, No. 12 United States Supreme Court Advance Opinions, June 1, 1929, page 411, and in the case of People of the State of New York vs. Latrobe, case No. 601, Supreme Court of the United States, decided May 13, 1929, the cases cited by the appellant as sustaining its position have no application to the facts in this case.

The case of Macallen Company vs. Massachusetts, No. 578, Supreme Court of the United States, decided May 27, 1929, No. 13, United States Supreme Court Advance Opinions, June 15, 1929, page 531, has no bearing on the case at bar because the court found in that case that the tax was in fact a tax on the income derived from tax exempt bonds of the United States and other tax exempt securities, and that it was the purpose and intent of the law there in question and held to be invalid, to tax such income.

We respectfully submit that under the authorities cited supra and other cases cited in our original brief, that the decision of the court in this case is right and sustained by all of the authorities bearing on similar facts. We therefore ask that the rehearing be denied.

Respectfully submitted,

STRATTON SHARTEL,
Attorney-General of the State of Missouri.
WALTER E. SLOAT,
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Assistants,
Solicitors for Appellees.